IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15161 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD MUNICIPAL CORPN. & 1 - Petitioner(s)
Versus
PRAVINKANT BALKRISHNA THAKER & 2 - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner(s) : 1 - 2.
MR BHARAT R PANDYA for Respondent(s) : 1,
MRS VD NANAVATI for Respondent(s) : 2,
MR SIRAJ GORI AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/07/2006

ORAL JUDGMENT

1. In the present petition the petitioners have challenged an order dated 27th June, 2003 passed by

the Gujarat Affiliated Colleges Service Tribunal in Application No.17/1997.

2. The respondent no.1 herein was employed by the petitioners as Junior Technician. Respondent No.1 had approached the Tribunal by filing Application No.17/1997 preliminary contending that as per Ordinance No.172 of the Gujarat University, age of retirement in his case should be 60 years. It was also the case of respondent no.1 that the petitioners have adopted the said ordinance and accordingly he should not be made to retire before crossing the age of 60 years.

3. Respondent no.1 before the Tribunal was successful in getting interim injunction against his retirement at the age of 58 years. During the pendency of the application before the Tribunal he also crossed 60 years and had, therefore retired from service. The Tribunal while taking up the application for final hearing found that the issues have become infructuous and the application was accordingly disposed of. This order of the Tribunal dated 27th June, 2003 was challenged by the petitioners herein before this Court in Special Civil Application No.18177/03. Learned Single Judge of this Court by order dated 29th September, 2004 upheld the contention of the petitioners that the Tribunal should not have disposed of the application of respondent no.1 as having become infructuous and the application should have been decided on merits.

3.1 The learned Single Judge recorded the contention of the petitioners that in any case salary for the service rendered by respondent no.1 is not to be recovered. Learned Single Judge remanded the proceedings to the Tribunal after quashing the order dated 27/7/2003 and provided that the application be decided on merits in accordance with law.

4. Upon remand the Tribunal passed fresh order on 16/4/2005. It is this order that the petitioners have challenged in the present petition.

5. In the impugned order the learned Judge was pleased to observe that the High Court observed that the issues should be decided on merits and the Tribunal should proceed on merits in accordance with law expeditiously. The Tribunal further observed that the employee worked upto the age of 61 years and, therefore, the dispute of the Corporation is irrational. The Tribunal further observed that

> "But even thereafter one year was extended by the authority i.e. Ahmedabad Municipal, Corporation of the Applicant and the Respondent Nos. 1 and 2 had taken the service of the Applicant for further one more year i.e. The applicant had served in the respondent college till the completion of 61 years of his age. So, the dispute of the Corporation is irrational and voidable

as they themselves continued the applicant in the respondent college. Even after the completion of 60 years, there is no question of controversy between the parties. I failed to understand why the Corporation has challenged the order of this Tribunal before the Hon'ble High Court on the same way they have continued the applicant in the service of the respondent college till completion of 61 years as there is no provision for such type of extension neither in the ordinance of Gujarat University nor any resolution was passed by the respondent authority. But, the said application was filed by the respondent nos. 1 and 2 before the Hon'ble High Court only to save themselves from the audit. At this juncture, I feel that there is no controversy between the parties as the interim order was passed by my predecessor on 4/4/1997. But, it was not challenged till the final disposal of this application, no review or any miscellaneous application was filed before this Tribunal challenging the order of my predecessor and dated 4/4/1997. Neither they have approached the Hon'ble High Court nor they have requested this Tribunal for final hearing as early as possible. So, even the respondent nos. 1 and 2 do not want to proceed with this matter as there is no urgency on the part f them as they have accepted the order of this

Tribunal dated 4/4/1997, while the final haring was proceeded in 2003 and order was passed by this Tribunal dated 27/6/2003. Considering the above mentioned facts, I do not feel it proper to hear this matter, but considering the direction of the Hon'ble High Court to proceed with this matter on merits, I had issued notices to all the respective parties to remain present before this Tribunal and the applicant has submitted a purshis, whereby he was continued in the service of the respondents till completion of 61 years, but even no objection was taken by the L.A.., Mr. N.K.Sisodiya, who is representing the respondent nos. 1 and 2. After considering the Ordinance 172 of Gujarat University and resolutions passed by the corporation, my predecessors was pleased to pass the interim order in favour of the applicant and pursuant to that, he was continued in the service of the respondent till he completed the age of 60 years. So, today, I hereby confirm the order of my predecessor passed dated 4/4/1997 and I hereby declare that the applicant was entitled to continue in the service of the respondents till he completed the age of 60 years and also entitled to get retiral benefits considering his age as 60 years. In view of above, the matter stands disposed of on merits as per the direction

of the Hon'ble High Court”.

6. The observations and conclusions of the Tribunal with respect are perplexing to say the least. This Court had come to the conclusion that the application of respondent no.1 could not have been disposed of as having become infructuous, since the question of retiral benefits on such extended service had to be decided. Respondent no.1 continued to discharge his duties beyond the age of 58 years only on account of interim protection granted by the Tribunal. Therefore, though respondent no.1 had crossed the age of 60 years and had retired from service, the question of his correct retirement age was most relevant to decide whether he should receive retiral benefits for the extended period of service or not. Despite this Court having remanded the proceedings to the Tribunal, the Tribunal observed as noted above that it does not feel proper to hear the matter but only considering the direction of the Hon'ble High Court notices were issued. Having thus shown reluctance to decide the issues on merits the Tribunal proceeded to close the case by observing that her predecessor was pleased to pass interim order in favour of the applicant and pursuant there too the applicant was continued in service of the respondent till he completed the age of 60 years, so I confirm the order of the predecessor passed on 4/4/1997 and declare that the applicant was entitled to continue in service till he completed the age of 60 years and get retiral benefits on that basis.

7. Once the proceedings were disposed of as having become infructuous. The same could not have been done since the question of retiral benefits of the employee depended on the outcome of the application. This Court reminded the Tribunal of its duty in this regard and remanded the proceedings for consideration on merits. The Tribunal went on record to show reluctance to decide the issues on merits despite the direction of the High Court. Not only that, even the ultimate decision that the Tribunal gave once again upon remand was nothing but to avoid deciding the issue on merits. This Court had specifically requested the Tribunal to decide the issues on merits. Instead what the Tribunal did was to disposed of the proceedings by one line conclusion that whatever my predecessor has done as an interim measure, I hereby confirm. This is not the manner in which the High Court required the Tribunal to decide the issue. The conclusion of the High Court was clear and the directions were unequivocal. Under no circumstances, the Tribunal should have closed the chapter by refusing to decide the real controversy regarding the correct age of retirement of respondent no.1 i.e. applicant before the Tribunal.

8. Under the circumstances this Court shall have to take up the question of claim of respondent no.1 regarding his age of retirement being 60 years and not 58 years as suggested by the petitioners.

9. In this regard it can be seen that it was preliminary the applicant who had approached the Tribunal with an assertion that his correct age of retirement is not 58 years but the same should be 60 years. It was thus the duty of the applicant i.e respondent no.1 herein to establish his case before the Tribunal by producing necessary material in this regard. Learned advocate Shri Munshaw for the petitioners has made available the application filed by respondent no.1 before the Tribunal and the reply filed by the petitioner in response to the same. The application of the applicant before the Tribunal lays no foundation to come to the conclusion that the correct age of retirement for the applicant was 60 years. Main thirst of the application is that in the past the Tribunal has granted interim orders in favour of several employees to protect their continuance till the age of 60 years. Surely such interim orders cannot be the basis for establishing the correct age of retirement of an employee. It is the case of the petitioners that ordinance 172 of Gujarat University applied only to teaching staff and the petitioners adopted such extended age of retirement upto 60 years only for teaching staff of the Corporation. Respondent no.1 was a Technician and was, therefore, not covered under the said ordinance. I find no material on record produced by respondent no.1 to seek extended age of retirement upto 60 years. In his case atleast, therefore, the Tribunal could not have granted full benefits considering his age of retirement as 60 years. Under these

circumstances, the order passed by the Tribunal on 16th April, 2005 is quashed. Respondent no.1 shall not receive post retiral benefits on the basis of his extended service beyond 58 years. The assurance given to the Court in the earlier round of litigation regarding non-recovery of the salary already paid shall continue.

10. With these directions, the petition is disposed of. Rule is made absolute. No costs.

(Akil Kureshi, J.)

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